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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

GLOBAL APOGEE, a Wyoming
Corporation,

Plaintiff,

v.

SUGARFINA, INC., a Delaware
Corporation, JOSHUA REZNICK, an
individual, ROSIE O'NEILL, an
individual, DOES 1-10 and UNKNOWN
ENTITIES 1-10,

Defendants.

JOSHUA REZNICK, an individual,
ROSIE O'NEILL, an individual,
Counter-Claimants,

v.

GLOBAL APOGEE, a Wyoming
Corporation,

Counter-Defendants.

CASE NO. 2:18-cv-05162-RSWL-E
[Courtroom of the Honorable Ronald
S.W. Lew]

**STIPULATED PROTECTIVE
ORDER**

Complaint Filed: 06/11/2018
Trial Date: TBA

I. PURPOSES AND LIMITATIONS

A. Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section XIII(C), below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the Court to file material under seal.

II. GOOD CAUSE STATEMENT

A. This action may involve trade secrets, customer and pricing lists and other valuable research, development, commercial, financial, technical and/or proprietary information for which special protection from public disclosure and from use for any purpose other than prosecution of this action is warranted. Such confidential and proprietary materials and information consist of, among other things, confidential business or financial information, information regarding confidential business practices, or other confidential research, development, or commercial information (including information implicating privacy rights of third parties), information otherwise generally unavailable to the public, or which may be privileged or otherwise protected from disclosure under state or federal statutes, court rules, case decisions, or common law. This includes confidential and proprietary materials and information such as client lists, vendor lists, licensing agreements with various business people and entities, financial statements, and private communications to third parties related to

1 enforcement of intellectual property rights. Accordingly, to expedite the flow of
 2 information, to facilitate the prompt resolution of disputes over confidentiality of
 3 discovery materials, to adequately protect information the parties are entitled to keep
 4 confidential, to ensure that the parties are permitted reasonable necessary uses of such
 5 material in preparation for and in the conduct of trial, to address their handling at the
 6 end of the litigation, and to serve the ends of justice, a protective order for such
 7 information is justified in this matter. It is the intent of the parties that information will
 8 not be designated as confidential for tactical reasons and that nothing be so designated
 9 without a good faith belief that it has been maintained in a confidential, non-public
 10 manner, and there is good cause why it should not be part of the public record of this
 11 case.

12 **III. DEFINITIONS**

13 A. Action: This pending federal lawsuit.

14 B. Challenging Party: A Party or Non-Party that challenges the designation
 15 of information or items under this Order.

16 C. “CONFIDENTIAL” Information or Items: Information (regardless of
 17 how it is generated, stored or maintained) or tangible things that qualify for protection
 18 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
 19 Statement.

20 D. Counsel: Outside Counsel of Record and House Counsel (as well as their
 21 support staff).

22 E. Designating Party: A Party or Non-Party that designates information or
 23 items that it produces in disclosures or in responses to discovery as
 24 “CONFIDENTIAL.”

25 F. Disclosure or Discovery Material: All items or information, regardless of
 26 the medium or manner in which it is generated, stored, or maintained (including,
 27 among other things, testimony, transcripts, and tangible things), that are produced or
 28 generated in disclosures or responses to discovery in this matter.

1 G. Expert: A person with specialized knowledge or experience in a matter
2 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
3 expert witness or as a consultant in this Action.

4 H. House Counsel: Attorneys who are employees of a party to this Action.
5 House Counsel does not include Outside Counsel of Record or any other outside
6 counsel.

7 I. Non-Party: Any natural person, partnership, corporation, association, or
8 other legal entity not named as a Party to this action.

9 J. Outside Counsel of Record: Attorneys who are not employees of a party
10 to this Action but are retained to represent or advise a party to this Action and have
11 appeared in this Action on behalf of that party or are affiliated with a law firm which
12 has appeared on behalf of that party, and includes support staff.

13 K. Party: Any party to this Action, including all of its officers, directors,
14 employees, consultants, retained experts, and Outside Counsel of Record (and their
15 support staffs).

16 L. Producing Party: A Party or Non-Party that produces Disclosure or
17 Discovery Material in this Action.

18 M. Professional Vendors: Persons or entities that provide litigation support
19 services (e.g., photocopying, videotaping, translating, preparing exhibits or
20 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
21 their employees and subcontractors.

22 N. Protected Material: Any Disclosure or Discovery Material that is
23 designated as "CONFIDENTIAL."

24 O. Receiving Party: A Party that receives Disclosure or Discovery Material
25 from a Producing Party.

26 **IV. SCOPE**

27 A. The protections conferred by this Stipulation and Order cover not only
28 Protected Material (as defined above), but also (1) any information copied or extracted

1 from Protected Material; (2) all copies, excerpts, summaries, or compilations of
 2 Protected Material; and (3) any testimony, conversations, or presentations by Parties
 3 or their Counsel that might reveal Protected Material.

4 B. Any use of Protected Material at trial shall be governed by the orders of
 5 the trial judge. This Order does not govern the use of Protected Material at trial.

6 **V. DURATION**

7 A. Even after final disposition of this litigation, the confidentiality
 8 obligations imposed by this Order shall remain in effect until a Designating Party
 9 agrees otherwise in writing or a court order otherwise directs. Final disposition shall
 10 be deemed to be the later of (1) dismissal of all claims and defenses in this Action,
 11 with or without prejudice; and (2) final judgment herein after the completion and
 12 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
 13 including the time limits for filing any motions or applications for extension of time
 14 pursuant to applicable law.

15 **VI. DESIGNATING PROTECTED MATERIAL**

16 A. Exercise of Restraint and Care in Designating Material for Protection

17 1. Each Party or Non-Party that designates information or items for
 18 protection under this Order must take care to limit any such designation to specific
 19 material that qualifies under the appropriate standards. The Designating Party must
 20 designate for protection only those parts of material, documents, items, or oral or
 21 written communications that qualify so that other portions of the material, documents,
 22 items, or communications for which protection is not warranted are not swept
 23 unjustifiably within the ambit of this Order.

24 2. Mass, indiscriminate, or routinized designations are prohibited.
 25 Designations that are shown to be clearly unjustified or that have been made for an
 26 improper purpose (e.g., to unnecessarily encumber the case development process or to
 27 impose unnecessary expenses and burdens on other parties) may expose the
 28 Designating Party to sanctions.

1 3. If it comes to a Designating Party's attention that information or
2 items that it designated for protection do not qualify for protection, that Designating
3 Party must promptly notify all other Parties that it is withdrawing the inapplicable
4 designation.

5 B. Manner and Timing of Designations

6 1. Except as otherwise provided in this Order (see, e.g., Section
7 B(2)(b) below), or as otherwise stipulated or ordered, Disclosure or Discovery
8 Material that qualifies for protection under this Order must be clearly so designated
9 before the material is disclosed or produced.

10 2. Designation in conformity with this Order requires the following:

11 a. For information in documentary form (e.g., paper or
12 electronic documents, but excluding transcripts of depositions or other pretrial or trial
13 proceedings), that the Producing Party affix at a minimum, the legend
14 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
15 contains protected material. If only a portion or portions of the material on a page
16 qualifies for protection, the Producing Party also must clearly identify the protected
17 portion(s) (e.g., by making appropriate markings in the margins).

18 b. A Party or Non-Party that makes original documents
19 available for inspection need not designate them for protection until after the
20 inspecting Party has indicated which documents it would like copied and produced.
21 During the inspection and before the designation, all of the material made available
22 for inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has
23 identified the documents it wants copied and produced, the Producing Party must
24 determine which documents, or portions thereof, qualify for protection under this
25 Order. Then, before producing the specified documents, the Producing Party must affix
26 the "CONFIDENTIAL legend" to each page that contains Protected Material. If only
27 a portion or portions of the material on a page qualifies for protection, the Producing
28

1 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
2 markings in the margins).

3 c. For testimony given or in other prehearing or hearing
4 proceedings, the transcript and testimony during such deposition or other proceeding
5 will be treated as presumptively “CONFIDENTIAL” and shall be treated by the
6 Receiving Party in accordance with the terms of this Stipulated Protective Order
7 governing the treatment of “CONFIDENTIAL” information, for a period of thirty (30)
8 days following receipt of such transcript. A party desiring to maintain the
9 “CONFIDENTIAL” treatment of such transcript or any portion thereof following such
10 period may do so by providing written notice to the other party identifying the portions
11 of the transcript to remain “CONFIDENTIAL” on or before expiration of the foregoing
12 thirty (30) day period.

13 d. For information produced in form other than document and
14 for any other tangible items, that the Producing Party affix in a prominent place on the
15 exterior of the container or containers in which the information is stored the legend
16 “CONFIDENTIAL.” If only a portion or portions of the information warrants
17 protection, the Producing Party, to the extent practicable, shall identify the protected
18 portion(s).

19 C. Inadvertent Failure to Designate

20 1. If timely corrected, an inadvertent failure to designate qualified
21 information or items does not, standing alone, waive the Designating Party’s right to
22 secure protection under this Order for such material. Upon timely correction of a
23 designation, the Receiving Party must make reasonable efforts to assure that the
24 material is treated in accordance with the provisions of this Order.

25 **VII. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

26 A. Timing of Challenges

27 1. Any party or Non-Party may challenge a designation of
28 confidentiality at any time that is consistent with the Court’s Scheduling Order.

1 B. Meet and Confer

2 1. The Challenging Party shall initiate the dispute resolution process
3 under Local Rule 37.1 et seq.

4 C. The burden of persuasion in any such challenge proceeding shall be on
5 the Designating Party. Frivolous challenges, and those made for an improper purpose
6 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
7 expose the Challenging Party to sanctions. Unless the Designating Party has waived
8 or withdrawn the confidentiality designation, all parties shall continue to afford the
9 material in question the level of protection to which it is entitled under the Producing
10 Party's designation until the Court rules on the challenge.

11 **VIII. ACCESS TO AND USE OF PROTECTED MATERIAL**

12 A. Basic Principles

13 1. A Receiving Party may use Protected Material that is disclosed or
14 produced by another Party or by a Non-Party in connection with this Action only for
15 prosecuting, defending, or attempting to settle this Action. Such Protected Material
16 may be disclosed only to the categories of persons and under the conditions described
17 in this Order. When the Action has been terminated, a Receiving Party must comply
18 with the provisions of Section XIV below.

19 2. Protected Material must be stored and maintained by a Receiving
20 Party at a location and in a secure manner that ensures that access is limited to the
21 persons authorized under this Order.

22 B. Disclosure of "CONFIDENTIAL" Information or Items

23 1. Unless otherwise ordered by the Court or permitted in writing by
24 the Designating Party, a Receiving Party may disclose any information or item
25 designated "CONFIDENTIAL" only to:

26 a. The Receiving Party's Outside Counsel of Record in this
27 Action, as well as employees of said Outside Counsel of Record to whom it is
28 reasonably necessary to disclose the information for this Action;

1 b. The officers, directors, and employees (including House
2 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this
3 Action;

4 c. Experts (as defined in this Order) of the Receiving Party to
5 whom disclosure is reasonably necessary for this Action and who have signed the
6 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

7 d. The Court and its personnel;

8 e. Court reporters and their staff;

9 f. Professional jury or trial consultants, mock jurors, and
10 Professional Vendors to whom disclosure is reasonably necessary or this Action and
11 who have signed the “Acknowledgment and Agreement to be Bound” attached as
12 Exhibit A hereto;

13 g. The author or recipient of a document containing the
14 information or a custodian or other person who otherwise possessed or knew the
15 information;

16 h. During their depositions, witnesses, and attorneys for
17 witnesses, in the Action to whom disclosure is reasonably necessary provided: (i) the
18 deposing party requests that the witness sign the “Acknowledgment and Agreement to
19 Be Bound;” and (ii) they will not be permitted to keep any confidential information
20 unless they sign the “Acknowledgment and Agreement to Be Bound,” unless otherwise
21 agreed by the Designating Party or ordered by the Court. Pages of transcribed
22 deposition testimony or exhibits to depositions that reveal Protected Material may be
23 separately bound by the court reporter and may not be disclosed to anyone except as
24 permitted under this Stipulated Protective Order; and

25 i. Any mediator or settlement officer, and their supporting
26 personnel, mutually agreed upon by any of the parties engaged in settlement
27 discussions.
28

**IX. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
IN OTHER LITIGATION**

A. If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

1. Promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

2. Promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

3. Cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

B. If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the Court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

**X. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
PRODUCED IN THIS LITIGATION**

A. The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

1 B. In the event that a Party is required, by a valid discovery request, to
 2 produce a Non-Party's confidential information in its possession, and the Party is
 3 subject to an agreement with the Non-Party not to produce the Non-Party's
 4 confidential information, then the Party shall:

5 1. Promptly notify in writing the Requesting Party and the Non- Party
 6 that some or all of the information requested is subject to a confidentiality agreement
 7 with a Non-Party;

8 2. Promptly provide the Non-Party with a copy of the Stipulated
 9 Protective Order in this Action, the relevant discovery request(s), and a reasonably
 10 specific description of the information requested; and

11 3. Make the information requested available for inspection by the
 12 Non-Party, if requested.

13 C. If the Non-Party fails to seek a protective order from this court within 14
 14 days of receiving the notice and accompanying information, the Receiving Party may
 15 produce the Non-Party's confidential information responsive to the discovery request.
 16 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce
 17 any information in its possession or control that is subject to the confidentiality
 18 agreement with the Non-Party before a determination by the court. Absent a court
 19 order to the contrary, the Non-Party shall bear the burden and expense of seeking
 20 protection in this court of its Protected Material.

21 **XI. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

22 A. If a Receiving Party learns that, by inadvertence or otherwise, it has
 23 disclosed Protected Material to any person or in any circumstance not authorized under
 24 this Stipulated Protective Order, the Receiving Party must immediately (1) notify in
 25 writing the Designating Party of the unauthorized disclosures, (2) use its best efforts
 26 to retrieve all unauthorized copies of the Protected Material, (3) inform the person or
 27 persons to whom unauthorized disclosures were made of all the terms of this Order,
 28

1 and (4) request such person or persons to execute the “Acknowledgment and
2 Agreement to be Bound” attached hereto as Exhibit A.

3 **XII. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
4 **PROTECTED MATERIAL**

5 A. When a Producing Party gives notice to Receiving Parties that certain
6 inadvertently produced material is subject to a claim of privilege or other protection,
7 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
8 Procedure 26(b)(5)B). The inadvertent production by a Party of documents or
9 information subject to the attorney-client privilege, work-product protection, or any
10 other applicable privilege or protection, will not waive the applicable privilege and/or
11 protection. The Parties expressly waive the applicability of the showings required by
12 Fed. Rule of Civ. Proc 502(b)(1)-(3), and any privilege or protection that would
13 otherwise have applied will continue to apply irrespective of the factors set forth in
14 such provisions. In the event of an inadvertent production, the recipient must inform
15 the Producing Party and return the documents or destroy such documents as required
16 hereunder within five (5) business days from when the inadvertent production is
17 discovered, or from receipt of notice that the privileged or protected documents were
18 inadvertently produced. The Receiving Party may thereafter challenge the designation
19 of privilege or protection, provided, however, that such challenges shall not be based
20 upon or made with reference to the fact of the inadvertent production, and instead will
21 be based only upon such grounds as may have existed absent the existence of any
22 inadvertent disclosure or claimed inadvertent disclosure. To the extent there is a
23 challenge to the designation of privilege or protection, the burden is on the designating
24 party to support the designation and the Judge may, in his discretion, award attorney’s
25 fees and costs to the Party who prevails in such a challenge.

26 **XIII. MISCELLANEOUS**

27 A. Right to Further Relief
28

1. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

B. Right to Assert Other Objections

1. By stipulating to the entry of this Protective Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

C. Filing Protected Material

1. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a Party's request to file Protected Material under seal is denied by the Court, then the Receiving Party may file the information in the public record unless otherwise instructed by the Court.

XIV. FINAL DISPOSITION

A. After the final disposition of this Action, as defined in Section V, within sixty (60) days of a written request by the Designating Party, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain

1 an archival copy of all pleadings, motion papers, trial, deposition, and hearing
2 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
3 reports, attorney work product, and consultant and expert work product, even if such
4 materials contain Protected Material. Any such archival copies that contain or
5 constitute Protected Material remain subject to this Protective Order as set forth in
6 Section V.

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1 B. Any violation of this Order may be punished by any and all appropriate
2 measures including, without limitation, contempt proceedings and/or monetary
3 sanctions.

4
5 Dated: August 22, 2022

FOLEY BEZEK BEHLE & CURTIS LLP

6
7
8 By: /s/
ROGER N. BEHLE, JR.
9 Attorneys for Plaintiff

10 Dated: August 22, 2022

MCDERMOTT WILL & EMERY LLP

11
12
13 By: /s/ Jason D. Strabo*

JASON D. STRABO
14 Attorneys for Individual Defendants

15 *I attest that all other signatories listed, and on
16 whose behalf the filing is submitted, concur in
17 the filing's content and have authorized the filing.
L.R. 5-4.3.4

18
19
20 PURSUANT TO STIPULATION, IT IS SO ORDERED.

21 DATED: August 23, 2022

22
23 /s/ Charles F. Eick

24 HONORABLE CHARLES F. EICK
25 United States Magistrate Judge
26
27
28

EXHIBIT A

“ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND”

I, _____, do solemnly swear that I am familiar with the terms of the Stipulated Protective Order (“Order”) entered in *Global Apogee v. Joshua Resnick and Rosie O’Neill*, Case No. 2:18-cv-05162-RSWL-E (the “Action”) , and hereby agree to comply with and be bound by the terms and conditions of said Order, unless and until modified by further order of the Court. I will not disclose to any individuals, other than those specifically authorized by the Arbitrator or in the Order, any documents or information designated as **CONFIDENTIAL** pursuant to the Order which is disclosed to me. Nor will I copy, use or disclose any documents or information designated as **CONFIDENTIAL** under the Oath except for the purpose of the Action and/or any rights of any of the parties related to the Action and as authorized by the Order.

Dated: _____

By: _____

Signature

Print Name